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3 UNITED STATES DISTRICT COURT

## 4 DISTRICT OF NEVADA

5 HERBERT S. OLSON,

6 v. Plaintiff,

7 STATE OF NEVADA, DEPARTMENT  
8 OF PUBLIC SAFETY,

9 Defendant.

Case No. 3:22-cv-00232-ART-CLB

ORDER

10 Plaintiff Herbert S. Olson brings this action pro se under the Americans  
11 with Disabilities Act (“ADA”), the Rehabilitation Act, and NRS 484B.467, for  
12 violations that allegedly occurred at the Adult Parole and Probation Division  
13 Office of the Nevada Department of Public Safety (“DPS”) at 145 Keddie Street in  
14 Fallon, Nevada. (ECF No. 1 (“Complaint”).) DPS moves to dismiss (ECF No. 5)  
15 based on the statute of limitations, standing, mootness, and failure to state a  
16 claim. Plaintiff has moved to appear telephonically on DPS’s motion to dismiss  
17 (ECF No. 20), and DPS has moved to strike Plaintiff’s motion to appear  
18 telephonically (ECF No. 21). Plaintiff has also moved to file a sur-reply (ECF No.  
19 22) and for expeditious resolution of DPS’s motion to dismiss (ECF No. 25). The  
20 Court denies Plaintiff’s motion to file a sur-reply. Because Plaintiff’s claims are  
21 barred by the statute of limitations, the Court grants DPS’s motion to dismiss  
22 without leave to amend. The Court denies as moot Plaintiff’s motion to appear  
23 telephonically, DPS’s motion to strike, and Plaintiff’s motion for expeditious  
24 resolution.

25 **I. BACKGROUND**

26 According to Plaintiff’s complaint, Plaintiff was stopped by law enforcement  
27 officers at a highway drug checkpoint in Humboldt County, Nevada on March 22,  
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1 2012.<sup>1</sup> (Complaint at ¶ 26.) This led to Plaintiff's arrest and indictment for  
 2 possession of marijuana. (*Id.* at ¶ 35.) Prior to Plaintiff's October 18, 2013  
 3 criminal trial, Plaintiff was ordered to undergo a background check at the Adult  
 4 Parole and Probation Office of DPS at 145 Keddie Street in Fallon, Nevada. (*Id.* at  
 5 ¶¶ 42-43.) Plaintiff was convicted and sentenced to two concurrent four-year  
 6 sentences. (*Id.* at ¶ 49.) After Plaintiff served 362 days in custody, Plaintiff was  
 7 released on parole, and on April 4, 2015, Plaintiff reported again to the Adult  
 8 Parole and Probation Office at 145 Keddie Street in Fallon, Nevada, where Plaintiff  
 9 "confirmed that said facility was not in compliance with Title II of the ADA, and  
 10 explained those facts to his parole officer[,] who thereafter, said his parole officers  
 11 will visit his home once a month in Fallon." (*Id.* at ¶ 50.) Plaintiff was honorably  
 12 discharged from parole. (*Id.*) Plaintiff filed his complaint on May 24, 2022.

13 The remainder of Plaintiff's complaint consists of a list of transcribed  
 14 statutes and regulations that DPS allegedly violated at the 145 Keddie Street  
 15 office. (*Id.* at 13-20.) Plaintiff alleges violations of 28 C.F.R. § 36.403; sections  
 16 208.2.4, 216.2, 216.3, 264, 406.4, 502.2, 502.4, 502.6, 502.3.3, 642.8.1,  
 17 642.8.6, and 705 of the 2010 ADA accessibility standards; sections 4.1.2(5)(b)  
 18 4.6.3, 4.6.4, and 4.6.5 of the 1991 ADA accessibility standards; and NRS  
 19 484B.467. Plaintiff submits four photographs of the front of the 145 Keddie Street  
 20 office. (Complaint Exh. B.) Plaintiff brings three claims: (1) Title II of the ADA; (2)  
 21 Section 504 of the Rehabilitation Act; and (3) NRS 484B.467.

22 **II. MOTION TO DISMISS**

23 As a threshold matter, the Court will address Plaintiff's motion to file a sur-  
 24 reply. (ECF No. 22.) Plaintiff's two-page motion contains no explanation for why  
 25 a sur-reply is warranted or why good cause exists, nor is such good cause

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26  
 27 <sup>1</sup> Plaintiff's complaint contains several pages of description of the events leading to his arrest and  
 28 indictment, as well as Plaintiff's history of filing complaints under the ADA and the Rehabilitation  
 Act. (Complaint at ¶¶ 12-42, 44-48.) As these facts are not relevant to Plaintiff's instant claims,  
 the Court will not summarize them here.

1 apparent from the content of Plaintiff's proposed sur-reply itself. As DPS points  
 2 out, under Local Rule LR 7-2(g), a party may not file supplemental pleadings,  
 3 briefs, authorities, or evidence without leave of court granted for good cause.  
 4 Plaintiff's motion to file sur-reply is denied.

5 A court may dismiss a plaintiff's complaint for "failure to state a claim upon  
 6 which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint  
 7 must provide "a short and plain statement of the claim showing that the pleader  
 8 is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
 9 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it  
 10 demands more than "labels and conclusions" or a "formulaic recitation of the  
 11 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
 12 *Twombly*, 550 U.S. at 555). All factual allegations set forth in the complaint are  
 13 taken as true and construed in the light most favorable to the plaintiff. *Lee v. City*  
 14 *of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). Thus, to survive a motion to  
 15 dismiss, a complaint must contain sufficient factual matter to "state a claim to  
 16 relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550  
 17 U.S. at 570).

18 DPS argues that Plaintiff's claims are barred by the statute of limitations  
 19 since the events described in Plaintiff's complaint occurred in 2013 and 2014.  
 20 The Ninth Circuit Court of Appeals has held that since Title II of the ADA does  
 21 not contain an express statute of limitations, courts must borrow the statute of  
 22 limitations applicable to the most analogous state law claim, so long as it is not  
 23 inconsistent with federal law or policy to do so. *Sharkey v. O'Neal*, 778 F.3d 767,  
 24 770 (9th Cir. 2015). The same inquiry determines the limitations period under  
 25 the Rehabilitation Act. *Cooks v. Contra Costa Cnty.*, 2021 WL 5492985, at \*1 (9th  
 26 Cir. Nov. 23, 2021), *cert. denied sub nom. Cooks v. Contra Costa Cnty., California*,  
 27 143 S. Ct. 202 (2022).

28 DPS asserts that a one-year limitations period applies to Plaintiff's claims

1 since Title II of the ADA is most similar to NRS 651.070, which prohibits  
 2 discrimination in places of public accommodation and has a one-year limitations  
 3 period under NRS 651.090. (ECF No. 5 at 4.) Plaintiff responds only that “ADA or  
 4 RA complaints of Title II do not apply to statutes of limitation.” (ECF No. 15 at 2.)  
 5 The last allegations Plaintiff describes are in 2015. (Complaint at 12.) Even  
 6 assuming, arguendo, that a three-year limitations period applies, *see Brizuela v.*  
 7 *City of Sparks*, 2022 WL 3229389, at \*13 (D. Nev. Aug. 10, 2022) (applying three-  
 8 year limitations period of NRS 11.190(a)(3) to claim under Title II of the ADA),  
 9 Plaintiff’s claims would still not be timely since claims arising before May 24,  
 10 2019 would be time-barred. Regarding Plaintiff’s claim for violation of NRS  
 11 484B.467, even assuming that the four-year default limitations period of NRS  
 12 11.220 applies, Plaintiff’s claims would still not be timely.

13 Plaintiff refers to the fact that in 2022 he took photographs of the allegedly  
 14 violative areas of the 145 Keddie Street office and the violations still existed. (ECF  
 15 No. 15 at 3.) However, under federal law, a cause of action accrues when the  
 16 plaintiff knows or has reason to know of the injury which is the basis of the  
 17 action. *Alexis v. Fed. Bureau of Investigation*, 698 F. App’x 507, 508 (9th Cir.  
 18 2017). The claims accrued and the limitations period began to run when Plaintiff  
 19 was actually injured by the allegedly violative conditions.

20 **III. CONCLUSION**

21 Plaintiff’s motion to file a sur-reply (ECF No. 22) is denied. Defendant DPS’s  
 22 motion to dismiss (ECF No. 5) is granted. As all of Plaintiff’s allegations are  
 23 substantially outside the limitations period, leave to amend is denied.

24 Plaintiff’s motion to appear telephonically (ECF No. 20) and motion for  
 25 expeditious resolution (ECF No. 25), and DPS’s motion to strike (ECF No. 21) are  
 26 denied as moot.

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1 DATED THIS 13<sup>th</sup> day of June 2023.  
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5 ANNE R. TRAUM  
6 UNITED STATES DISTRICT JUDGE  
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